

P.E.R.C. NO. 2015-25

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY JUDICIARY
(OCEAN VICINAGE),

Petitioner,

-and-

Docket No. SN-2014-020

PROBATION ASSOCIATION OF NEW JERSEY
(PROFESSIONAL CASE RELATED UNIT),

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the State of New Jersey Judiciary (Ocean Vicinage) for a restraint of binding arbitration of a grievance filed by the Probation Association of New Jersey (Professional Case Related Unit). The grievance asserts that the Judiciary violated several provisions of the parties' collective negotiations agreement (CNA) by imposing a new policy of only offering after hours "beeper duty" overtime assignments to probation officers from the juvenile and children sections. The Commission holds that permitting an arbitrator to second-guess that determination would substantially limit the Judiciary's prerogative to match the best qualified employees to the particular job.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Petitioner, Office of Counsel to the
Administrative Director of the Courts (R. Brian
McLaughlin, of counsel; Susanna J. Morris, on the
brief)

For the Respondent, Fox & Fox LLP, attorneys (Lynsey A.
Stehling, of counsel)

DECISION

On September 30, 2013, the State of New Jersey Judiciary (Ocean Vicinage) filed a scope of negotiations petition. The Judiciary seeks a restraint of binding arbitration of a grievance filed by the Probation Association of New Jersey (Professional Case Related Unit) ("PANJ"). The grievance asserts that the Judiciary violated several provisions of the parties' collective negotiations agreement (CNA) by imposing a new policy of only offering overtime after hours "beeper duty" assignments to probation officers in a particular section. We restrain arbitration.

The parties have filed briefs and exhibits. The Judiciary submitted the certification of Joseph Sclama, the Family Division Manager for Ocean Vicinage. PANJ submitted the certifications of Senior Probation Officers Stephen McMullen, Dwight Covalieskie, Linval Lewis, and Joseph Heckendorn. These facts appear.

PANJ represents all non-supervisory, case-related professional employees of the Judiciary, in all trial court operations (from the courtroom to probation to case management) who have caseload responsibilities. The Judiciary and PANJ are parties to a CNA with a term of July 1, 2008 through June 30, 2012. The grievance procedure ends in binding arbitration. Article 5.3 of the CNA, entitled "Overtime", provides:

(a) Overtime for work performed in excess of 35 hours per week shall be at straight time up to 40 hours per week, except as otherwise provided for herein for "beeper" or "on call" duty, and time and one-half after 40 hours....

(b) Overtime opportunities within a job title, within the work unit, shall be offered as equitably as reasonably practicable among available, qualified employees using a rotating overtime list in order of seniority within the title. Overtime shall first be offered to employees in the title within the work unit and then to other qualified employees. The provision shall not require displacement of an employee from his or her normal work assignment.

(c) Employees are expected to be available for a reasonable amount of overtime work. An employee who refuses an overtime assignment with a reasonable excuse will not be subject to discipline.

(d) Payments for carrying beepers or otherwise being required to remain on call shall be eliminated and replaced by payment for time actually worked at a time and one half rate of pay which shall be applicable even for hours worked between 35 and 40 and shall be paid in cash.

Sclama, for the Judiciary, certifies that the Family Division's docket types can generally be divided into two sections: one dealing with juvenile matters, and one dealing with adult matters. Juvenile matters are handled by the Juvenile Intake unit and the Children In Courts unit, and adult matters are handled by the Domestic Violence unit and the Dissolution and Non-Dissolution unit. The Juvenile Intake and Children In Courts units are in the same building and staffed by probation officers. Sclama certifies that prior to July 2012, only Juvenile Intake unit probation officers were assigned to perform the overtime work known as "beeper duty." Beeper duty requires a probation officer to be available after-hours to police officers and municipal court personnel who have juveniles in custody. Probation officers on beeper duty must carry a cell phone after-hours for a week at a time and respond to all calls received. After receiving information concerning a juvenile, the probation officer on beeper duty determines whether the juvenile should remain in the County detention center, be placed on electronic monitoring, or be released to the care of a parent or guardian pending a formal proceeding. In making this determination, the

Officer conducts a risk assessment and assigns a score that correlates to one of three disposition options. The probation officer also may make different disposition determinations notwithstanding the option dictated by the juvenile's score. Sclama certifies that in arriving at the appropriate disposition decision, the probation officer draws upon his experience in dealing with juveniles or that particular juvenile.

Sclama certifies that in July 2012, a staff reallocation reduced the number of probation officers assigned to the Juvenile Intake unit from four to three, so each officer would have to perform more weeks of beeper duty per year. To reduce the burden on Juvenile Intake probation officers, the Family Division Manager expanded the pool of probation officers eligible for beeper duty to include probation officers working in the Children In Courts unit. He certifies that Children In Courts officers, like Juvenile Intake officers, have the skills and experience of dealing with juvenile offenders and are sometimes already familiar with the juvenile at issue as part of their regular duties. He certifies that familiarity with the juvenile at issue can often aid a probation officer in making a disposition determination. He certifies that because Juvenile Intake and Children In Courts probation officers are in the same building, it is "easier for the Division to fulfill its obligation of limiting the number of staff who are made privy to the sensitive

and often times confidential information concerning juveniles.” He certifies that Juvenile Intake and Children In Courts probation officers are the most qualified to perform beeper duty, and that probation officers assigned to the Family Division’s Domestic Violence and Dissolution and Non-Dissolution units have no work-related reason to be familiar with juvenile problems and do not possess the experience and skills to deal with juveniles.

Heckendorn, for PANJ, certifies that probation officers assigned to beeper duty, in addition to carrying a cell phone, carry a laptop for using a risk screening tool to determine the appropriate disposition of a detained juvenile. He certifies that any probation officer using this risk assessment computer tool will generate the same score when using the same information pertaining to a juvenile. Although the system has an override feature allowing the probation officer to make a different determination, he states that the Judiciary does not encourage employees to make such overrides and requires supervisor approval for such. He certifies that Juvenile Intake unit probation officers do not have additional skills that make a difference in assessing the appropriate disposition options. He certifies that a probation officer’s familiarity with the juvenile at issue during a beeper duty assignment is not relevant to the score produced by the risk assessment tool. He certifies that upon completion of the beeper duty incident, the probation officer

provides his supervisor with a copy of the risk assessment determination, and no other staff are privy to that information.

Covaleskie, for PANJ, certifies that nine Vicinages either require or allow all Family Division probation officers, regardless of whether they are assigned to a juvenile or adult unit, to perform beeper duties. Covaleskie certifies that the Civil Service Commission's job specification for the Judiciary Case Processing Band (Probation Services Track) demonstrates that all probation officers are qualified to perform beeper duty.

Lewis, for PANJ, certifies that he has been employed as a Family Division probation officer assigned to the Family Intake unit for approximately thirteen years. He certifies that his regular duties involve only adult matters. He certifies that he has been performing beeper duties, which involve juveniles taken into custody, for approximately thirteen years, and that he and other similarly situated probation officers who do not handle juvenile matters in their regular units have the skills and experience to handle such beeper duties.

On July 5, 2012, PANJ filed a grievance asserting that the Judiciary violated Articles 5.1, 5.2, 6, 11, and 27 of the CNA by assigning only Children In Court probation officers to assist the Juvenile Intake unit by working overtime "beeper duty." As a remedy, PANJ requests that the Judiciary cease the policy change restricting "beeper duty" overtime opportunities to only certain

probation officers, and immediately offer "beeper duty" assignments to all Family Division probation officers. The Judiciary denied the grievance at all steps. On April 29, 2013, PANJ demanded binding arbitration. This petition ensued.

Our jurisdiction is narrow. The Commission is addressing the abstract issue of whether the subject matter in dispute is within the scope of collective negotiations. We do not consider the merits of the grievance or any contractual defenses that the Judiciary may have. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978).

Local 195, IFPTE v. State, 88 N.J. 393 (1982), articulates the standards for determining whether a subject is mandatorily negotiable:

[A] subject is negotiable between public employers and employees when (1) the item intimately and directly affects the work and welfare of public employees; (2) the subject has not been fully or partially preempted by statute or regulation; and (3) a negotiated agreement would not significantly interfere with the determination of governmental policy. To decide whether a negotiated agreement would significantly interfere with the determination of governmental policy, it is necessary to balance the interests of the public employees and the public employer. When the dominant concern is the government's managerial prerogative to determine policy, a subject may not be included in collective negotiations even though it may intimately affect employees' working conditions. [Id. at 404-405]

We must balance the parties' interests in light of the particular facts and arguments presented. City of Jersey City v. Jersey City POBA, 154 N.J. 555, 574-575 (1998).

The Judiciary argues that arbitration should be restrained because public employers have a managerial prerogative to determine which employees are best qualified to perform the after-hours risk assessment of juveniles in custody. Citing City of Long Branch, P.E.R.C. No. 83-15, 8 NJPER 448 (¶13211 1982), the Judiciary asserts that this prerogative also encompasses the right to designate the best qualified employee to an overtime assignment. Citing City of Vineland, P.E.R.C. No. 2013-37, 39 NJPER 221 (¶74 2012), the Judiciary contends that permitting an arbitrator to second-guess its determination that only juvenile or child unit probation officers are qualified for overtime "beeper duty" assignments would substantially limit its prerogative to match the best qualified employees to the particular job.

PANJ responds that the Judiciary has failed to substantiate its claim that only probation officers assigned to the Juvenile Intake and Children in Courts units possess the skills necessary to perform beeper duty assignments. Citing Paterson Police PBA No. 1 v. Paterson, 87 N.J. 78 (1981), PANJ asserts that if an employer fails to prove that a negotiated overtime allocation agreement would place a substantial limitation on government's

policymaking powers, grievances alleging breaches of that agreement are arbitrable.^{1/} PANJ contends that its certifications rebut the Judiciary's allegations regarding special skills for beeper duty, and cites Borough of Clayton, P.E.R.C. No. 2013-47, 39 NJPER 272 (¶93 2012) for the proposition that the Commission has refused to restrain arbitration where the employer failed to substantiate that the employee denied an overtime assignment was unqualified. PANJ argues that Vineland is distinguishable because in that case the union failed to demonstrate that the other employees were qualified to perform the job duties associated with the overtime assignment at issue.

In this case the Judiciary specifically determined that the probation officers assigned to the Juvenile Intake unit and the Children In Courts unit are the most qualified to perform the beeper duty overtime work as set forth above. PANJ's reliance on Clayton is misplaced because that decision concerned the allocation of overtime among police officers who were all equally qualified and the employer failed to substantiate that any of the officers were unqualified to perform the overtime assignments due to alleged fatigue issues.

^{1/} The Paterson analysis applies to police officers and fire fighters because the scope of negotiations for those employees is broader than for other public employees since N.J.S.A. 34:13A-16 provides for a permissive as well as a mandatory category of negotiations; probation officers do not fall under the Paterson analysis.

PANJ's argument regarding Vineland being distinguishable is also misplaced. Although only the employer filed a certification in that decision, Vineland, where the City received a grant to provide curfew intervention project services, is similar to the instant case. Since the nature of the project concerned interacting with juvenile offenders, the Chief of Police determined that detectives from the Juvenile Unit should staff the project, and as a result, those particular detectives would work the overtime funded by the grant. We held:

Where receipt of additional compensation is directly tied to an assignment to a particular position, the dominant issue is the employer's non-negotiable prerogative to assign employees to meet the governmental policy goal of matching the best qualified employees to particular jobs. See, e.g., Local 195, IFPTE v. State, 88 N.J. 393 (1982); Ridgefield Park; Cf. New Jersey Transit Corp., P.E.R.C. No. 96-78, 22 NJPER 199 (¶27106 1996). This prerogative trumps a claim that the assignment must be made on the basis of seniority or other process. See New Jersey Transit, P.E.R.C. No. 2006-36, 31 NJPER 358 (¶143 2005).

[Id.]

As set forth above, although PANJ asserts that all Family Division probation officers are qualified for beeper duty, the Judiciary specifically cited reasons why probation officers assigned to the Juvenile Intake unit and the Children In Courts unit are the most qualified. As a result, permitting an arbitrator to second-guess that determination would substantially

limit the Judiciary's prerogative to match the best qualified employees to the particular job. See Somerset Cty. Sheriff, P.E.R.C. No. 2014-92, 41 NJPER 63 (¶19 2014); City of Elizabeth, P.E.R.C. No. 2007-11, 32 NJPER 309 (¶128 2006).

ORDER

The request of the State of New Jersey Judiciary (Ocean Vicinage) for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Boudreau and Eskilson voted in favor of this decision. Commissioner Jones voted against this decision. Commissioners Voos and Wall were not present.

ISSUED: October 30, 2014

Trenton, New Jersey